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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

File: SRC-02-106-50611

Office: TEXAS SERVICE CENTER

Date: JAN 14 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

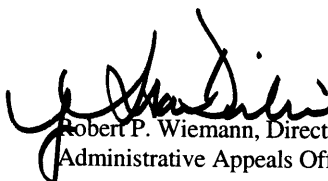
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hotel and restaurant business with 45 employees and a gross annual income of \$1.5 million. It seeks to employ the beneficiary as an executive chef for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner's former counsel submits a brief. It is noted that the record contains a notice of withdrawal as attorney or representative, signed by counsel and the beneficiary on November 4, 2003.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the proposed duties, which include supervising and managing a team of kitchen workers and cooks, are so specialized and complex that a baccalaureate degree is required. Counsel further states that the record contains job listings to demonstrate that this degree requirement is industry wide.

Counsel's statement on appeal is not persuasive. The AAO does not use a title, by itself, when determining whether a particular job

qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

We would like for him to coordinate the executive chef and kitchen manager position at our location in Columbia[,] Tennessee[,] and also at our new facility in Nashville, also known as the Clarion Hotel. In that position, he will be specifically engaged in a temporary capacity in a specialty occupation involving responsibility for activities which include the direction of special events, including banquet affairs for the Ramada Inn Hotel, Columbia, TN and the Clarion Hotel in Nashville. He will also be responsible for the supervision and direction of staff to ensure adequate service coverage. He will also be responsible for the hiring procedures, employment compliance with Federal and State laws, payroll and all aspects of reservations, customer relations, and multi-functioned management skills.

Furthermore, [the beneficiary] will be coordinating the activities of training and orientation for new hires including but not limited to cooks, and other kitchen workers engaged in preparing and cooking foods in the hotel restaurant. . . . planning the menus and the utilization of foods surpluses and leftovers. . . .

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or

4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in hotel and restaurant management or a related field. The proffered position is that of an executive chef. In its *Occupational Outlook Handbook*, 2002-2003 edition, at pages 307-308, the Department of Labor (DOL) finds that although a high school diploma is not required for beginning jobs, it is recommended for those planning a career as a cook or chef. An increasing number of chefs and cooks obtain their training through high school, post-high school vocational programs, or 2 or 4-year colleges. Chefs and cooks may also be trained in apprenticeship programs offered by culinary institutes, industry associations, and trade unions. Although the DOL additionally states that many years of training and experience are necessary for an executive chef or cook position in a fine restaurant, the DOL does not specifically state that a baccalaureate degree in restaurant management or an equivalent thereof is necessary for such positions. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as hotel and restaurant management, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The numerous job listings submitted by the petitioner are noted. Only one of these job postings, however, specifies the requirement of a baccalaureate degree in restaurant and hotel management or an equivalent. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not

demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.